

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Richmond Division

In re:)	CHAPTER 11
)	
)	
CIRCUIT CITY STORES, INC., et. al.)	Case No. 08-35653-KRH
)	Jointly Administered
Debtors.)	
)	
)	
HILLSBOROUGH COUNTY,)	
a political subdivision)	
of the State of Florida,)	
Movant,)	
)	
)	
v.)	
)	
CIRCUIT CITY STORES, INC., et al.,)	
Respondents.)	

**NOTICE OF MOTION FOR RELIEF FROM
AUTOMATIC STAY OF 11 U.S.C. §362(a)**

Hillsborough County, a political subdivision of the State of Florida, the Movant herein, will file papers with the Court to obtain relief from the automatic stay pursuant to 11 U.S.C. §362(d).

Your rights may be affected. You should read these papers carefully and discuss them with your attorney.

If you do not want the Court to grant the motion for relief from stay, or if you want the Court to consider your views on the motion, then you or your attorney must:

File with the Court, at the address shown below, within fifteen (15) days from the date of service of this motion, a written response pursuant to Local Bankruptcy Rule 4001(a)-1(C) and 9013-1(H):

Clerk of Court
United States Bankruptcy Court
701 East Broad Street
Richmond, Virginia 23219

You must also mail a copy to:

P. Matthew Roberts
Counsel for the Movant
Berkeley & DeGaetani
1301 N. Hamilton St., Suite 200
Richmond, VA 23230

Attend a preliminary hearing, if any, to be scheduled by the Clerk of the Court, notice of which will be mailed at a later date. If no timely response has been filed opposing the relief requested, the Court may deem the opposition waived, treat the motion as conceded, and grant the relief requested in the motion for relief from stay.

If you mail your response to the Court for filing, you must mail it early enough so the court will receive it on or before the expiration of the fifteen day period. You will be notified separately by the Clerk of the hearing on the Motion.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion for relief from stay, and may enter an order granting that relief.

DATE: December 24, 2008

Signature: /s/ P. Matthew Roberts
P. Matthew Roberts, VSB70259
Counsel for the Movant
Berkeley & DeGaetani
1301 N. Hamilton St., Suite 200
Richmond, VA 23230
Phone: 804.644.0345

Certificate and List of Service

I hereby certify that on the 24th day of December, 2008, a true copy of this Notice of Motion for Relief from Automatic Stay was sent by first class mail, postage prepaid, to the necessary parties on the List attached herein to this Notice and Motion.

/s/ P. Matthew Roberts

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Richmond Division

In re:)	CHAPTER 11
)	
)	
CIRCUIT CITY STORES, INC., et. al.)	Case No. 08-35653-KRH
)	Jointly Administered
Debtors.)	
)	
)	
HILLSBOROUGH COUNTY,)	
a political subdivision)	
of the State of Florida,)	
Movant,)	
)	
)	
v.)	
)	
CIRCUIT CITY STORES, INC., et al.,)	
Respondents.)	

MOTION FOR RELIEF FROM AUTOMATIC STAY OF 11 U.S.C. §362(a)

TO: THE HONORABLE KEVIN R. HUENNEKENS, BANKRUPTCY JUDGE:

COMES NOW THE MOVANT, Hillsborough County, a political subdivision of the State of Florida, the Movant herein, ("Movant"), and respectfully files this Motion pursuant to 11 U.S.C. Section 362(d)(2)(B), and Rules 4001 and 9014 of the *Federal Rules of Bankruptcy Procedure*, seeking entry of an Order lifting the automatic stay and authorizing entry of a Stipulated Final Judgment in a taking action involving real

P. Matthew Roberts, VSB70259
BERKELEY & DEGAETANI
1301 N. Hamilton Street, Suite 200
Richmond, Virginia 23230
Phone: (804) 644-0345
Fax: (804) 648-1909
Email: mroberts@bdlaw.org
Hillsborough County,
a political subdivision of the State of Florida

property now pending in the Circuit Court of the Thirteenth Judicial Circuit in and for the Hillsborough County State of Florida – Civil Division, and represents to the Court in support thereof as follows:

1. That on November 10, 2008, Circuit City Stores, Incorporated, (the “Debtors”), filed a voluntary petition for relief under Chapter 11 of the *United States Code*, 11 U.S.C. *et seq.*, (the “Petition”), in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, Bankruptcy Case Number 08-35653-KRH, (“Bankruptcy Action”).

2. This Motion is filed pursuant to 11 U.S.C. §362(d) and Bankruptcy Rules 4001 and 9014, seeking relief from the automatic stay of 11 U.S.C. §362(a) and 11 U.S.C. § 362(e).

3. This Court has original jurisdiction over this matter under 28 U.S.C. §1334 and 11 U.S.C. §361 and §362, and it is a core proceeding under Section 157 of Title 28 U.S.C.

4. The Movant is a political subdivision of the State of Florida.

5. The Respondents have an ownership interest in certain commercial real property in Hillsborough County, Florida, (property identification number A-14-27-19-1AS-000000-000A2.0), marked on the official county plat book 0083, page number 0041, as Division B, Parcel 708, (“Parcel 708”), located at 18061 Highwoods Preserve, Tampa, Florida 33647.

6. At some time prior to the filing of the Petition, the Movant instituted an action in the Circuit Court of Thirteenth Judicial Circuit in and for Hillsborough County, State of Florida – Civil Division, (“State Court”), Case Number 08-22694, (“State Action”),

whereby the Movant filed a Petition in Eminent Domain and Declaration of Taking pursuant to Florida Statutes, (the “Taking”).

7. The Movant and Respondents have agreed to the terms of the Taking and improvement of a certain portion of Parcel 708, whereby the Respondents will recover \$2,500.00 from the Movant “as full compensation for any and all claims, including property interest taken, business damages, and all other damages claimed by Circuit City, its officers, directors, employees, successors and assigns now and in the future arising from this cause, inclusive of all expert fees and costs in this matter pursuant to Section 73.091, Florida Statutes, as well as attorney’s fees pursuant to Section 73.082, Florida Statutes,” as more fully shown by a draft of the Joint Motion For Stipulated Final Judgment and Order as to Parcel 708 attached hereto as “Attachment A.”

8. The Joint Motion filed in the State Action contains an Exhibit which clearly defining the scope of the Taking as *de minimis* – the Movant is taking a temporary construction easement to improve the driveway entrance to the commercial property which functions as a shopping center.

9. That an Order of Taking has been entered in the State Court pending the relief from stay in this bankruptcy action, as more fully shown by a copy of the Order of Taking attached hereto as “Attachment B.”

10. The finding that a certain parcel of “property is necessary to an effective reorganization requires a showing by a debtor of (1) his or her intent, (2) ‘the anticipated integration of the property at issue in the production of future income’ and (3) ‘the nature and extent of the property involved.’” *See In re Freeman*, 297 B.R. 41, 44, (Bankr. E.D. Va., 2002), citing *In re Scott*, 121 B.R. 605, 608 (Bankr.E.D.Okla.1990).

11. There has been no showing by the Respondents that they intend to object to the Taking as per the Proposed Agreed Order, attached hereto as “Attachment C;” there is no anticipated detrimental effect to the property at issue in the production of future income; the size of the property to be taken in relation to the entire Parcel 708, as already mentioned, is minimal (a driveway portion of substantially-sized shopping center).

12. Accordingly, the automatic stay precluding resolution of the State Action pertains to an interest in property which is not necessary to an effective reorganization in the Bankruptcy Action.

13. The State Court stands ready to proceed with resolution of the State Action contingent upon relief from stay being granted by this Court in Respondents’ Bankruptcy Action.

14. Pursuant to 11 U.S.C. §362(d)(2)(B), and for reasons contained herein, cause exists to terminate the automatic stay under 11 U.S.C. § 362(a) in this Bankruptcy Action.

\\

\\

\\

\\

\\

\\

\\

\\

\\

PRAYER FOR RELIEF:

WHEREFORE, the Movant respectfully requests an Order: (a) Lifting the automatic stay to permit the State Court the endorse and enter Joint Motion for Stipulated Final Judgment and Order as to Parcel 708, and to enter any other orders which are related and necessary to that cause of Taking; (b) Permitting the State Court to retain jurisdiction of the State Action solely for enforcement of this Taking matter; (c) Permitting the Movant to perfect the Taking as defined by the Order entered by the State Court in the State Action; (d) Granting such further relief as the nature of this case requires.

DATE: 12/24/2008

/s/ P. Matthew Roberts

P. Matthew Roberts, VSB70259

BERKELEY & DEGAETANI

1301 N. Hamilton Street, Suite 200

Richmond, Virginia 23230

Phone: (804) 644-0345

Fax: (804) 648-1909

Email: mroberts@bdlaw.org

Hillsborough County

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of December, 2008, a true copy of the foregoing Motion For Relief From Stay was served via electronic mail through the Court's Electronic Case Filing System to all parties receiving such notice, and by mail to the following:

Daniel F. Blanks, Esquire
Douglas M. Foley, Esquire
McGuire Woods LLP
9000 World Trade Center
101 W. Main Street
Norfolk, VA 23510
Facsimile: (757) 640-3957
Counsel for the debtors

Suzanne M. Driscoll
Shutts & Bowen LLP
National City Center
200 East Broward Blvd., Suite 2100
Ft. Lauderdale FL 33301
Facsimile: (954) 888-3077
Counsel for the debtors

Dion W. Hayes, Esquire
James S. Sheerin, Esquire
Sarah Beckett Boehm, Esquire
McGuire Woods LLP
One James Center
901 E. Cary Street
Richmond, VA 23219
Facsimile: (804) 698-2078
Counsel for the debtors

Robert Van Arsdale, Esquire
Assistant U.S. Trustee
Office of the U.S. Trustee
701 East Broad Street, Suite 4304
Richmond, VA 23219
Facsimile: (804) 771-2330
Office of the U.S. Trustee

Gregg M. Galardi, Esquire
Skadden Arps Slate Meagher & Flom,
LLC
One Rodney Square
P.O. Box 636
Wilmington, Delaware 19899-0636
Facsimile: (888) 329-3792
Counsel for the debtors

Linda K. Myers, Esquire
Kirkland & Ellis, LLP
200 East Randolph Drive
Chicago, Illinois 60601
Special Counsel for the Debtors

Chris L. Dickerson, Esquire
Kellan Grant, Esquire
Skadden Arps Slate Meagher & Flom,
LLC
333 West Wacker Drive
Chicago, IL 60606
Facsimile: (312) 407-0411
Counsel for the debtors

Lynn L. Tavenner, Esquire
Tavenner & Beran, PLC
20 North Eighth Street, Second Floor
Richmond, Virginia 23219
By: *Counsel for the Official Committee of
Unsecured Creditors*

/s/ P. Matthew Roberts
P. Matthew Roberts